

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2016

CORAM :

THE HONOURABLE MS. JUSTICE R.MALA

Crl.O.P.No.5941 of 2016
and
Crl.MP.Nos.3056 and 3057 of 2016

M.Sundararajan ... Petitioner
Vs.

R.Manoharan
Rep. by his Power of Attorney Agent,
V.Narayan. ... Respondent

Prayer:-Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the entire records concerned in C.C.No.234 of 2004 on the file of the Judicial Magistrate No.I, Tiruppur and quash the same.

For Petitioner : Mr.C.Prakasam

ORDER

The petitioner has come forward with this petition for quashing the complaint in C.C.No.234 of 2004 pending on the file of the learned Judicial Magistrate No.I, Tiruppur.

2.Learned counsel appearing for the petitioner submitted that the petitioner has issued cheques to the respondent/complainant as security while he borrowed money from the respondent. But the properties of the petitioner were disposed on the very next day. He further submitted that the petitioner has repaid the entire amount to the respondent. Hence, he prayed for quashing the proceedings in C.C.No.234 of 2004.

3.At the time of admission, argument of the learned counsel for the petitioner is heard in length.

4.The respondent filed a complaint against the petitioner stating that the petitioner borrowed a sum of Rs.8 lakhs on 05.10.2001 for his business purpose and agreed to repay the same with interest at the rate of 18% per annum to the complainant or

to his order and executed a promissory note. But he has neither paid the principal nor paid the interest. The petitioner issued a cheque dated 01.11.2003 for Rs.10 lakhs and when it was presented for encashment, that has been returned on 05.11.2003 with an endorsement "Funds Insufficient". After issuance of statutory notice under Section 138(B) of Negotiable Instrument Act, the respondent filed a complaint.

5.It is admitted by the petitioner that the cheque contains his signature. But he raised the defence that it was given as security while he borrowed money. He further submitted that the entire amount has been repaid. Now, the point to be decided is whether the cheque has been issued for security purpose, whether the entire amount has been repaid and whether the cheque has been issued for discharging legally subsisting liability? But it is only a question of fact and not a question of law. As per Sections 118 and 139 of Negotiable Instrument Act, the person who possess the cheque is entitled to invoke presumption that the cheque has been issued for discharging legally subsisting liability. But it is a rebuttable presumption. The petitioner/accused shall rebut the presumption by preponderance of probabilities either by cross examining the complainant or by examining other witnesses. Further, it is pertinent to note that the case is of the year 2004 and this petition has been filed in the year 2016, i.e. after 12 years. Therefore, I do not find any reason to quash the proceedings in C.C.No.234 of 2004. consequently, the Criminal Original Petition deserves to be dismissed and it is hereby dismissed.

6..In the result, the Criminal Original Petition stands dismissed. However, the trial Court is directed to dispose of C.C.No.234 of 2004 within a period of two months from the date of receipt of a copy of this order, after giving fair opportunity to both sides. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

cse

To

1.The Judicial Magistrate No.I,
Tiruppur.

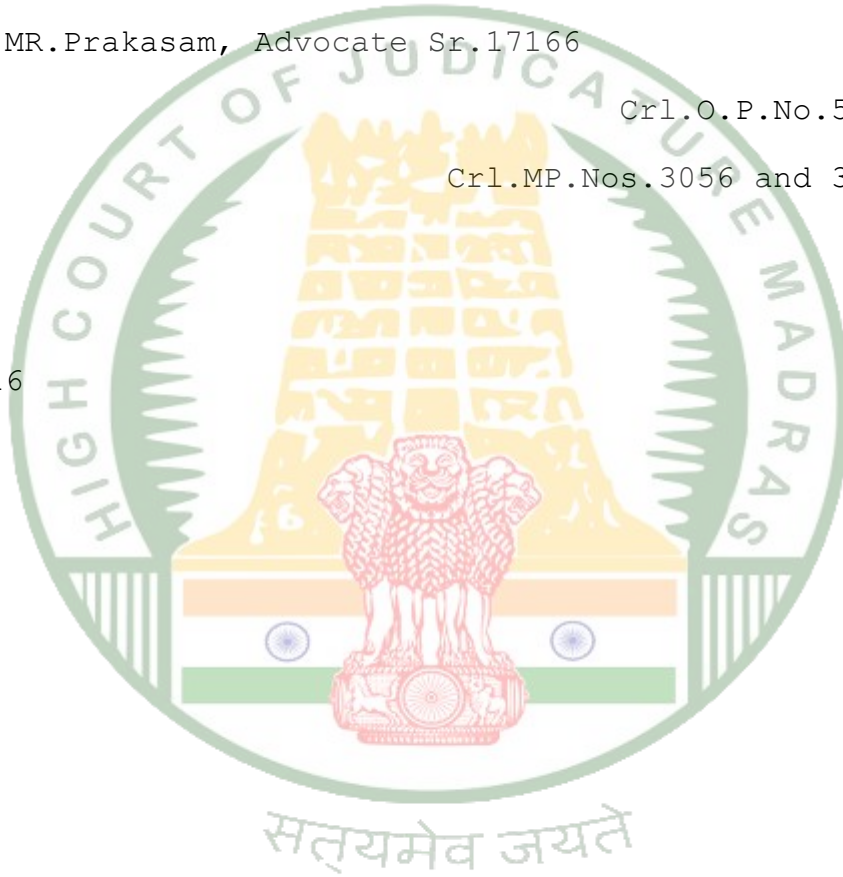
2. -do- The Chief Judicial Magistrate Tirupur.

3.The Public Prosecutor,
High Court, Madras.

+ 1 cc to MR.Prakasam, Advocate Sr.17166

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MG(CO)
Eu 04.04.16



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